

February 17, 2004

**VIA HAND DELIVERY**

William J. Keese, Commissioner Chairman  
California Energy Commission  
Docket Unit, MS-4  
1516 Ninth Street  
Sacramento, CA 95814-5512

Re: ***El Segundo Power Redevelopment Project***  
***Docket No. 00-AFC-14***  
***Comments to Presiding Member's Proposed Decision***

Dear Commissioner Keese:

El Segundo Power II ("ESP II") respectfully submits the following comments to the California Energy Commission's ("CEC") Presiding Member's Proposed Decision ("PMPD") for the El Segundo Power Redevelopment project ("ESPR"), 00-AFC-14, published on January 28, 2004.

The PMPD presents a sound and responsible decision by the Committee. The decision largely recognizes the parties' collaborative efforts and incorporates the significant number of agreed-to conditions of certification. ESP II especially appreciates the input and innovative ideas provided by many agencies and parties to assist the development of what will be an important, efficient, state-of-the art energy facility. The following comments are, with one exception, minor and administrative in nature. Even the one fundamentally important comment, regarding Condition of Certification BIO-2, seeks only to ensure that BIO-2 serves the express intent of the Committee.

**CONDITIONS CHART**

The following comments are focused on key issues or inconsistencies in the PMPD. Additionally, ESP II has provided a chart (see Attachment 1 "Conditions Chart"), which is intended to serve as a guide for other parties when commenting on the PMPD. The Conditions Chart identifies every condition of certification identified

within the PMPD and when and by what procedure each condition was agreed to by all parties. Where a condition in the PMPD differs from what parties had agreed to or where the condition reflects a decision by the Committee on a contested issue, the Conditions Chart so notes such differences.

### **SPECIFIC COMMENTS**

ESP II makes the following specific comments on the PMPD:

#### ***Air Quality***

##### **1) Evaluation of Intervenor Local Impact Claims**

On page 22 of the PMPD, the Committee addresses comments by Intervenors City of Manhattan Beach and Murphy/Perkins. These intervenors expressed belief that ESPR would cause unmitigated local impacts. The Committee evaluated the evidence and concluded that there will be no unmitigated significant *cumulative* impacts associated with ESPR from its exhaust emissions. ESP II concurs with that assessment. ESPR air modeling and corresponding compliance with all emission concentration requirements, as determined by the South Coast Air Quality Management District, also ensures that ESPR will not cause *direct* significant impacts to air quality.

##### **2) AQ-29 is Omitted**

AQ-29 does not appear in the PMPD although it is identified as an agreed-to condition as published on December 13, 2002 and accepted by all parties at the evidentiary hearings.<sup>1</sup> The text of the PMPD makes no indication that the Committee intended to omit AQ-29. Therefore, ESP II believes that this is an oversight and respectfully requests that the Committee add AQ-29 to the Final Decision, as the condition was published in the Agreed-To Conditions on December 13, 2002

##### **3) Misleading Text Alignment in AQ-C2**

In condition AQ-C2, the 11<sup>th</sup>, 12<sup>th</sup>, and 13<sup>th</sup> bulleted items (following the bulleted item that reads “the transport of borrowed fill material”) should be indented to ensure the requirements are correctly understood to be sub-requirements

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<sup>1</sup> For purposes of this letter, “agreed-to conditions” are those conditions agreed to by all parties, which were documented and published by CEC Staff in several publications. Such documents are differentiated herein by publication date.

regarding the transport of borrowed fill material. Such alignment is indicative of the way the three bulleted items appear on page 1 of the Staff's published agreed-to conditions dated December 13, 2002, which was how the condition was accepted by all parties.

**4) AQ-26 Does Not Match Version Agreed to By Parties.**

The version of AQ-26 is not the condition to which all parties ultimately agreed. The PMPD version matches the version in the December 13, 2002 Agreed-To Conditions document. CEC Staff, however, provided a revised version of AQ-26 in its Direct Written Testimony (see page 18), which was subsequently accepted by the parties. Therefore, AQ-26 should read as follows:

**AQ-26:** The 5 PPMV NH<sub>3</sub> emission limit(s) are averaged over 60 minutes at 3 percent O<sub>2</sub>, dry.

**Verification:** The project owner shall submit CEMS records and all calculations demonstrating compliance with the condition as part of the Quarterly Operational Report required in AQ-9.

**5) AQ-27 Does Not Match Version Agreed to By Parties**

The version of AQ-27 is not the condition to which all parties agreed. The PMPD version matches the version of AQ-27 as published by Staff on December 13, 2002. CEC Staff, however, provided a revised version of AQ-27 in its Direct Written Testimony (see page 17), which was subsequently agreed to by the parties. The change requires adding the words "**and the CPM**" following the words "**Executive Officer**" in both the first sentence and second sentence of AQ-27. ESP II requests that the Committee make this change.

***Biology***

**1) BIO-2 Contains Inconsistent Language**

The last sentence of BIO-2 requires the project owner to "construct and operate" an aquatic filter barrier if the Los Angeles Regional Water Quality Control Board ("LARWQCB") finds that ESGS intake #1 is suitable for a demonstration and if constructing and operating an aquatic filter barrier is "feasible." The LARWQCB will apply Section 316(b) of the Clean Water Act pursuant to new regulations applicable to existing facilities such as ESGS. In applying these new regulations, the LARWQCB may decide not to order the construction of an aquatic filter barrier even if the LARWQCB finds that such construction and operation is feasible.

The expressed intent of the Committee in the Biology section was to defer to the LARWQCB as to matters under its jurisdiction. Thus, ESP II believes that the Committee intended that the project owner should construct and operate an aquatic filter barrier only if the LARWQCB ordered it under its NPDES permit. The condition, as it is now written, expressly requires the applicant to install an aquatic filter barrier even if the LARWQCB does not order or permit such an installation. For these reasons, ESP II requests that the Committee add the words; **orders the project owner to install an Aquatic Filter Barrier on intake #1 at ESGS in compliance with applicable 316(b) regulations then** immediately after the words "suitable for a demonstration," in the last sentence of BIO-2. This will eliminate the conflict and ensure that the Committee's intent is met.

Additionally, the new version of BIO-2 could be interpreted as instructing the LARWQCB regarding what criteria it should apply when determining whether to order that an aquatic filter barrier ("AFB") be installed. Thus, the condition should clearly and simply defer to the LARWQCB regarding when and how to determine if AFB technology is to be utilized. Finally, it is still not clear how and when new regulations will be in effect and how such regulations will be implemented. Therefore, language in the condition that creates an artificial deadline for submittal of the feasibility study could result in a study that is of no value to implementing new regulations. The study should simply be linked to the implementation of the new 316(b) regulations. Accordingly, ESP II proposes further modifications to BIO-2 and requests that the Committee adopt the proposed changes as written below. Such changes to BIO-2 make it clear that the LARWQCB is the deciding authority under Section 316(b) of the Clean Water Act:

**BIO-2** In consultation with the Los Angeles Regional Water Quality Control Board, the project owner shall conduct a study to determine the feasibility of constructing, deploying, and operating an aquatic filter barrier at intake #1 at ESGS. The feasibility study shall also determine expected benefits and potential impacts of the aquatic filter barrier if deployed and operated at intake #1. The feasibility study shall be submitted to the Los Angeles Regional Water Quality Control Board as part of the 2005 NPDES permit renew process **for possible use in implementing regulations under Section 316(b) of the Clean Water Act for existing facilities.** If the Los Angeles Regional Water Quality Control Board ~~finds that it is feasible to construct and operate~~

~~an aquatic filter barrier and that the ESGS intake #1 site is suitable for a demonstration,~~ **orders the project owner to install an Aquatic Filter Barrier on intake #1 at ESGS in compliance with applicable 316(b) regulations then** the project owner shall construct and operate the aquatic filter barrier.

**Verification:** The project owner shall submit to CPM and the LARWQCB a complete analysis and all results of the feasibility study ~~no later than 60 days prior to the submittal of~~ **as part of the evaluation involved in implementing NPDES permit renewal application applicable 316(b) regulations.**

#### *Hazardous Materials*

##### **1) HAZ-4 Does Not Match Version Previously Agreed To**

The version of HAZ-4 published in the December 13, 2002 Agreed-To Conditions document included a newly inserted word “or” following the first “and” in the second sentence. This change ensured that the project owner would retain the ability to choose to continue using 35% hydrazine. The parties agreed to HAZ-4 as published in the December 13, 2002 Agreed-To Conditions. For this reason ESP II requests that the Committee change the second sentence in HAZ-4 to read as follows:

“Should the study conclude that substitution is infeasible **and/or** the project owner elects to continue...” (Emphasis added)

#### *Land Use*

##### **1) Merged LAND-1, LAND-2, and LAND-3**

CEC Staff's Direct Written Testimony provides a new LAND-1 condition, which simply merged three LAND conditions in the FSA; specifically, LAND-1, LAND-2, and LAND-3. Although the Committee asked that the conditions be merged at the November 7, 2002 Pre-Hearing Conference, the Agreed-to Conditions published on December 13, 2002 contained the original LAND-1. It was not until January 6, 2003 that CEC Staff released a new LAND-1, which combined the original FSA LAND-1, 2, and 3. CEC Staff's Direct Written testimony also cited this new condition. The PMPD, however, contains the LAND-1 condition as it was published on December 13, 2002, which did not reflect the final, agreed-to language pursuant to the Pre-Hearing Conference.

Therefore, LAND-1, as it appears in the PMPD, should be replaced with the version published by CEC Staff on January 6, 2003.

**2) LAND-2 Does Not Match the Version Accepted By Parties**

LAND-2 matches the version published by the CEC Staff in its Agreed-To Conditions document on December 13, 2002. CEC Staff, however, subsequently revised LAND-2 in the Errata to the FSA docketed on January 6, 2003. ESP II agreed to the new version of LAND-2 in its Direct Written Testimony. ESP II believes that other parties also accepted the new version of LAND-2. For that reason, ESP II requests that the Committee replaces LAND -2 with the CEC Staff version, which was docketed on January 6, 2003.

**3) The New LAND-8 is Appropriate**

The Committee evaluated the current status of the lease from the State Lands Commission and chose to reword LAND-8. ESP II finds that the new version of LAND-8 is more feasible and appropriate given past Commission practices concerning site-control in other proceedings. Additionally, this condition is in accord with how the State Lands Commission is administering the lease status for the El Segundo Generating Station.

**4) ESP II Agrees with Changes to LAND-9**

LAND-9 is changed from the version to which the parties agreed. ESP II finds the changes, which remove references to a "public use area," to be appropriate and acceptable.

***Visual Resources***

**1) VIS-2 Reflects Parties Agreement**

VIS-2 does not match the version published by CEC Staff on December 31, 2002. Nevertheless, VIS-2 correctly matches what the parties agreed to, partly off the record, during the evidentiary hearing on February 19, 2003. The second paragraph of VIS-2, as found in the PMPD, was proposed by CEC Staff on pages 58 and 59 of its Written Rebuttal Testimony. The testimony regarding this change appears on pages 504 through 511 of the February 19, 2003 Evidentiary Hearing transcript. Though the parties did not expressly agree to that change on the record, the general tone of all parties was positive.

VIS-2 also provides for Landscape Committee Advisory Members. ESP II raised concerns during the Evidentiary Hearing regarding the role of the advisory members of the Landscape Committee. When informed that the presence of such advisory members would not be required for the Landscape Committee to meet and do its work, ESP II was satisfied with the intent of the condition. ESP II, therefore, has no objection to this condition as written in the PMPD and believes

that the condition reflects that language to which all parties agreed.

**CONCLUSION**

The foregoing represents ESP II's comments on the PMPD. ESP II looks forward to reviewing other parties' comments and to meeting with the Committee at the PMPD workshop on February 23, 2004.

Very truly yours,

JOHN A. MCKINSEY

JAM:kjh

Enclosure (COC Status Chart)

cc: Service List